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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,958	05/26/2006	Sheila Tunnell	418708003US	1683
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PERKINS COIE LLP			NGUYEN, TRINH T	
PATENT-SEA			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/560,958	TUNNELL, SHEILA	
	Examiner Trinh T. Nguyen	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 December 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12/14/05 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 

Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)
 

Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-19, drawn to a method for preventing injury to an animal, classified in class 119, subclass 28.5.
  - II. Claim 20, drawn to a method for manufacturing a pillow, classified in class 5, subclass 632.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions are unrelated because the method in Group I requires a step of placing the anesthetized animal such that the back of the animal is along the inner side of the elongated straight section of the pillow in which the method in Group II does not require and the method in Group II requires a step of filling the empty shell with a material appropriate for use in a veterinary pillow, such that the short portion extends back to the long portion and the arc of the curved portion is greater than 185 degrees in which the method in Group I does not require.

3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their

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recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Attorney Ng on 10/9/07 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-19. Affirmation of this election must be made by applicant in replying to this Office action. Claim 20 has been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

6. Claims 1-3,15, and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Leach (US6751817; see attached Figure 1 at the end of this Office Action for further explanation).

For claim 1, Leach teaches a method for preventing injury to an animal in a post-surgical veterinary setting, including the steps of: providing a pillow with elongated straight section, a first curved section attached at the top of said straight section and rotating between 185 and 235 degrees, and an second section attached to said first curved section at a first end, said second section having a second end extending, wherein the inside point of said second end of said second section is at least 50 percent closer to the inside edge of the elongated section than the inside point of the second section at said first end; placing said anesthetized animal such that the back of said animal is along the inner side of the elongated straight section of said pillow; placing the

head of the anesthetized animal such that it at least partially lies across the first curved section; arranging said animal such that the second section creates at least a small amount of pressure on the torso or front of said anesthetized animal, whereby the animal is protected during awakening from anesthesia.

For claim 2, Leach teaches the step of straddling the front paws (28) of said animal across said first curved portion.

For claim 3, Leach teaches said pillow is made of a washable and sanitizable material, such that said pillow may be used multiple times.

For claims 16-18, in lines 14-21 of col. 2, Leach teaches that the pillow is used to facilitate relief from pain and/or disorders from the animal and thus it would include that the animal has different injured parts (which includes a first and a second anatomical parts) within the animal's body when using the pillow.

#### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4-6, 8, 10-12, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leach.

For claims 4-6, as described above, Leach teaches all the claimed invention except for mentioning the steps of washing and/or sanitizing the pillow with a chemical and/or heat or radiation treatment. However, it would have been obvious to one of

ordinary skill in the art at the time the invention was made to have modified the method of Leach to have included these claimed steps (i.e., washing and/or sanitizing), since the Examiner takes Official Notice that such steps are old and well known technique used throughout the art of cleaning fabric article (such as a pillow).

For claim 8, Leach discloses most of the claimed invention except for the use of a specific material such as polypropylene for covering the pillow. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select such a material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

For claims 10-12, Leach discloses most of the claimed invention except for indicating that the animal is between 5 and 75 pounds, the second section extends least a third and no more than two thirds of the total distance of the length of the pillow, and the arc is between 195 and 220 degrees. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Leach's method so as to include the animal is between 5 and 75 pounds, the second section extends least a third and no more than two thirds of the total distance of the length of the pillow, and the arc is between 195 and 220 degrees, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Also, since applicant did not provide a reason and/or showing any criticality as to why the animal is between 5 and 75 pounds, the second section extends least a

third and no more than two thirds of the total distance of the length of the pillow, and the arc is between 195 and 220 degrees, it is believed that through trial and error during the process for preventing injury to an animal that one comes up with these optimum or workable ranges to meet the design criteria.

For claim 19, Leach further discloses the back of said animal is facing at least partially upward.

9. Claims 7,9,13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leach in view of Denesuk et al. (US6196156).

For claim 7, as described above, Leach teaches all the claimed invention except for said pillow has a covering made of vinyl.

Denesuk et al. teach a similar pillow as that of Leach wherein Denesuk et al.'s pillow has a covering made of vinyl (see lines 35-40 of col. 33). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the pillow of Leach so as to include a pillow has a covering made of vinyl, in a similar manner as taught in Denesuk et al., since vinyl is a tough and durable material thus provide a better protection for the pillow.

For claim 9, as described above, Leach teaches all the claimed invention except for said pillow is filled with poly-fill.

Denesuk et al. teach a similar pillow as that of Leach wherein Denesuk et al.'s pillow is filled with poly-fill (see lines 29-35 of col. 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the pillow of Leach so as to include a pillow filled with poly-fill, in a similar manner as taught

in Denesuk et al., so that the pillow has more cushioning and thus provide more comfort for the animal.

For claim 13, as described above, Leach teaches all the claimed invention except for said pillow is filled with a material including natural and synthetic fibers.

Denesuk et al. teach a similar pillow as that of Leach wherein Denesuk et al.'s pillow is filled with a material including natural and synthetic fibers. (see lines 29-32 of col. 10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the pillow of Leach so as to include a pillow filled with a material including natural and synthetic fibers, in a similar manner as taught in Denesuk et al., so that the pillow has more cushioning and thus provide more comfort for the animal.

For claim 14, as described above, Leach teaches all the claimed invention except for said pillow includes a core of compressed polyester.

Denesuk et al. teach a similar pillow as that of Leach wherein Denesuk et al.'s pillow includes a core of compressed polyester (see lines 19-21 of col. 25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the pillow of Leach so as to include a pillow with a core of compressed polyester, in a similar manner as taught in Denesuk et al., so that the pillow has more cushioning and thus provide more comfort for the animal.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-

6906. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M). The examiner's supervisor, Teri Luu can be reached on (571) 272-7045 for the purpose of status inquiry only. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trinh T Nguyen  
Primary Examiner  
Art Unit 3644

10/16/07